

FILED
DISTRICT COURT OF GUAM

JUN 27 2007

MARY L.M. MORAN
CLERK OF COURT

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

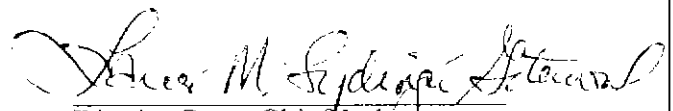
XIAN LONG YAO,

Defendant.

Criminal Case No. 07-00043

CLOSING JURY INSTRUCTIONS

Dated: June 27, 2007


District Court Chief Judge
Frances M. Tydingco-Gatewood

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COURT'S INSTRUCTION NO. 1
DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence and the arguments of the lawyers, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return -- that is a matter entirely up to you.

1 **COURT'S INSTRUCTION NO. 2**

2 **CHARGE AGAINST DEFENDANT NOT EVIDENCE, PRESUMPTION**
3 **OF INNOCENCE, BURDEN OF PROOF**

4 This is a criminal case brought by the United States government. The Indictment charges
5 the defendant, XIAN LONG YAO, with the crime of illegal reentry.

6 The indictment is not evidence. The defendant has pleaded not guilty to the charge. The
7 defendant is presumed to be innocent and does not have to testify or present any evidence to
8 prove innocence. The government has the burden of proving every element of each charge
9 beyond a reasonable doubt.

1 **COURT'S INSTRUCTION NO. 3**
2 **REASONABLE DOUBT - DEFINED**

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4 Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant
5 is guilty. It is not required that the government prove guilt beyond all possible doubt.

6 A reasonable doubt is a doubt based upon reason and common sense and is not based purely
7 on speculation. It may arise from a careful and impartial consideration of all the evidence, or from
8 lack of evidence.

9 If after a careful and impartial consideration of all the evidence, you are not convinced
10 beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty.
11 On the other hand, if after a careful and impartial consideration of all the evidence, you are
12 convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant
13 guilty.

1 **COURT'S INSTRUCTION NO. 4**

2 **WHAT IS EVIDENCE**

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4 The evidence from which you are to decide what the facts are consists of:

- 5 (1) the sworn testimony of any witness;
- 6 (2) the exhibits which have been received into evidence; and
- 7 (3) any facts to which all the lawyers have stipulated.
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1 **COURT'S INSTRUCTION NO. 5**

2 **WHAT IS NOT EVIDENCE**

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4 In reaching your verdict you may consider only the testimony and exhibits received into
5 evidence. Certain things are not evidence and you may not consider them in deciding what the facts
6 are. I will list them for you:
7

- 8 (1) Arguments and statements by lawyers are not evidence. The lawyers are not
9 witnesses. What they have said in their opening statements, closing arguments and
10 at other times is intended to help you interpret the evidence, but it is not evidence. If
11 the facts as you remember them differ from the way the lawyers state them, your
12 memory of them controls.
- 13 (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their
14 clients to object when they believe a question is improper under the rules of evidence.
15 You should not be influenced by the question, the objection, or the court's ruling on
16 it.
- 17 (3) Testimony that has been excluded or stricken, or that you have been instructed to
18 disregard, is not evidence and must not be considered.
- 19 (4) Anything you may have seen or heard when the court was not in session is not
20 evidence. You are to decide the case solely on the evidence received at the trial.
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1 **COURT'S INSTRUCTION NO. 6**

2 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

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4 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as
5 testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of
6 facts from which you could find that another fact exists, even though it has not been proved directly.
7 You are to consider both kinds of evidence. The law permits you to give equal weight to both, but
8 it is for you to decide how much weight to give to any evidence.

9 The word “infer” —or the expression “to draw an inference”—means to find that a fact exists
10 based on proof of another fact. For example, if you wake up in the morning and see that the
11 sidewalk is wet, you may find from that fact that it rained during the night. However, other
12 evidence, such as a turned on garden hose, may explain the water on the sidewalk. Therefore,
13 before you decide that a fact has been proved by circumstantial evidence, you must consider all
14 the evidence in the light of reason, experience, and common sense.

1 **COURT'S INSTRUCTION NO.7**
2 **CREDIBILITY OF WITNESSES**
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4 In deciding the facts in this case, you may have to decide which testimony to believe and
5 which testimony not to believe. You may believe everything a witness says, or part of it, or none of
6 it.

7 In considering the testimony of any witness, you may take into account:

- 8 (1) the opportunity and ability of the witness to see or hear or know the things testified
9 to;
10 (2) the witness's memory;
11 (3) the witness's manner while testifying;
12 (4) the witness's interest in the outcome of the case and any bias or prejudice;
13 (5) whether other evidence contradicted the witness's testimony;
14 (6) the reasonableness of the witness's testimony in light of all the evidence; and
15 (7) any other factors that bear on believability.
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17 The weight of the evidence as to a fact does not necessarily depend on the number of
18 witnesses who testify.
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COURT'S INSTRUCTION NO. 8

ACTIVITIES NOT CHARGED

The defendant is on trial only for the crime charged in the indictment, not for any other activities.

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COURT'S INSTRUCTION NO. 9
REENTRY OF DEPORTED ALIEN
(8 U.S.C. § 1326(a))

The defendant is charged in the indictment with Reentry of Deported Alien in violation of Section 1326(a) of Title 8 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant is an alien;

Second, the defendant was deported from the United States; and

Third, the defendant reentered the United States without the consent of the Secretary of the Department of Homeland Security or of any representative of the department.

An alien is a person who is not a natural-born or naturalized citizen [or a national] of the United States.

1 **COURT'S INSTRUCTION NO. 10**

2 **KNOWINGLY — DEFINED**

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4 An act is done knowingly if the defendant is aware of the act and does not act through

5 ignorance, mistake, or accident. The government is not required to prove that the defendant knew

6 that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts,

7 or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

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COURT'S INSTRUCTION NO. 11
DEFENDANT'S DECISION NOT TO TESTIFY

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

1 **COURT'S INSTRUCTION NO. 12**

2 **DUTY TO DELIBERATE**

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4 When you begin your deliberations, you should elect one member of the jury as your
5 foreperson. That person will preside over the deliberations and speak for you here in court.

6 You will then discuss the case with your fellow jurors to reach agreement if you can do so.
7 Your verdict, whether guilty or not guilty, must be unanimous.

8 Each of you must decide the case for yourself, but you should do so only after you have
9 considered all the evidence, discussed it fully with the other jurors, and listened to the views of your
10 fellow jurors.

11 Do not be afraid to change your opinion if the discussion persuades you that you should. But
12 do not come to a decision simply because other jurors think it is right.

13 It is important that you attempt to reach a unanimous verdict but, of course, only if each of
14 you can do so after having made your own conscientious decision. Do not change an honest belief
15 about the weight and effect of the evidence simply to reach a verdict.

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COURT'S INSTRUCTION NO. 13
CONSIDERATION OF EVIDENCE

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be — that is entirely for you to decide.

1 **COURT'S INSTRUCTION NO. 14**

2 **USE OF NOTES**

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4 Some of you have taken notes during the trial. Whether or not you took notes, you should
5 rely on your own memory of what was said. Notes are only to assist your memory. You should not
6 be overly influenced by the notes.
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COURT'S INSTRUCTION NO. 15
JURY CONSIDERATION OF PUNISHMENT

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

COURT'S INSTRUCTION NO. 16

RETURN OF VERDICT

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the Court that you are ready to return to the courtroom.

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COURT'S INSTRUCTION NO. 17
COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the court security officer signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question.

Remember that you are not to tell anyone — including me — how the jury stands, numerically or otherwise, on the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.